

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 93-0736 CS  
Controlled Substance Excise Tax  
For The Tax Period: 1993**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Controlled Substance Excise Tax - Possession**

**Authority:** IC 6-7-3-5

The taxpayer protests assessment of controlled substance excise tax.

**II. Tax Administration - Penalty**

**Authority:** IC 6-7-3-11.

The Taxpayer protests assessed penalty.

**STATEMENT OF FACTS**

Taxpayer was arrested for possession of marijuana on July 11, 1993. The Department issued the taxpayer a Controlled Substance Excise Tax (CSET) assessment on August 12, 1993. Taxpayer filed a protest of the CSET assessment via counsel on September 3, 1993. Taxpayer's listed counsel was contacted to schedule a hearing. The Department never received a response from taxpayer's counsel. Subsequent attempts to contact the taxpayer were made. A hearing was scheduled for taxpayer to address his protest. Taxpayer failed to appear. Using the best information available, efforts were made to contact taxpayer and taxpayer failed to respond. This determination is made based on the original protest filed with the Department.

## **I. Controlled Substance Excise Tax - Possession**

### **DISCUSSION**

Indiana Code 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered,
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

Taxpayer must prove by a preponderance of the evidence that he neither possessed, nor delivered, nor manufactured the marijuana upon which controlled substance excise tax was imposed. Without evidence to rebut the presumption that he is liable for the tax, based on the information in the file, the Department finds that taxpayer is responsible for the CSET assessment.

### **FINDING**

The taxpayer's protest is denied.

## **II. Tax Administration - Penalty**

### **DISCUSSION**

The taxpayer protests the assessed 100% penalty. Indiana Code 6-7-3-11 states in pertinent part, "A person who fails or refuses to pay the tax imposed by this chapter is subject to a penalty of one hundred percent (100%) of the tax in addition to the tax."

The Department determines that taxpayer is subject to penalty.

### **FINDING**

The taxpayer's protest to penalty is denied.